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February 6, 2019

**VIA ECF AND ELECTRONIC MAIL TO  
[bernstein.chambers@nysb.uscourts.gov](mailto:bernstein.chambers@nysb.uscourts.gov)**

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Room 723  
New York, New York 10004-1408

*Re: Picard v. BAM, L.P., et al.* (Adv. Pro. No. 10-04390) (SMB)

Dear Judge Bernstein:

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* We write in response to the letter dated February 5, 2019 (ECF No. 152) (the “Letter”) submitted by counsel for defendants (the “Defendants”) in the above-referenced adversary proceeding, regarding their request for an extension of the deadline to respond to the Trustee’s motion for summary judgment, which is currently due this Friday, February 8, 2019, and to file their own cross-motion for summary judgment.

It should be noted that Defendants’ counsel left a message with Trustee’s counsel at 2:20 p.m. on February 5, 2019 without describing the nature or purported urgency of his request, and then filed the Letter at 4:33 p.m. on the same date (as evidenced by the time stamp on ECF No. 152). That is hardly reasonable time to respond before filing the Letter and imposing on this Court given that the Trustee’s motion has been pending since December 21, 2018. Notwithstanding, while the Trustee does not object to the Defendants’ requested two-week extension to respond to the Trustee’s motion for summary judgment, the Trustee does object to Defendants’ request to file a cross-motion as untimely and for lack of good cause for the delay in making their request.

Defendants have been on notice of the Trustee’s intent to file his motion as early as the omnibus hearing on November 28, 2018, when this Court first invited the Trustee to file the motion, and again based on the discussion on the record at the omnibus hearing on December 19, 2018. Defendants have clearly been aware of the motion since it was filed over 45 days ago on

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December 21, 2018. At no point over that time did Defendants raise a cross-motion for summary judgment or seek this Court's permission to file such a motion. Instead, Defendants seek to further delay these proceedings with a belated request three days prior to their deadline to respond to the pending motion.

Mr. Ruegger claims that he has "recently" replaced Carole Neville as the attorney responsible for this case, but he is at the same law firm and has been working with Ms. Neville on this adversary proceeding. Specifically, Mr. Ruegger signed the Defendants' reply brief in support of Defendants' motion to withdraw the reference, filed on January 16, 2019, and the Defendants' underlying motion was originally filed on October 26, 2018 (No. 18 Civ. 9916 (VSB), ECF Nos. 1, 22). Mr. Ruegger is also named as Defendants' counsel in their January 25, 2019 motion for leave to appeal this Court's Memorandum Decision and Order Upholding Court's Equitable Jurisdiction (ECF Nos. 149-150).

For these reasons, the Trustee requests that his motion for summary judgment move forward with a two-week extension added to the existing briefing and argument schedule to avoid further delay. The Trustee further requests that this Court hold a pre-motion conference pursuant to Local Bankruptcy Rule 7056-1(a) prior to authorizing any cross-motion for summary judgment so that the parties and the Court can discuss the scope and content of any such motion to evaluate whether it is appropriate under the circumstances.

Trustee's counsel is available to discuss the foregoing at the convenience of the Court.

Respectfully submitted,

/s/ Nicholas J. Cremona

Nicholas J. Cremona

cc: Arthur H. Ruegger, Esq.  
Kevin H. Bell, Esq.  
Nathaniel Kelley, Esq.